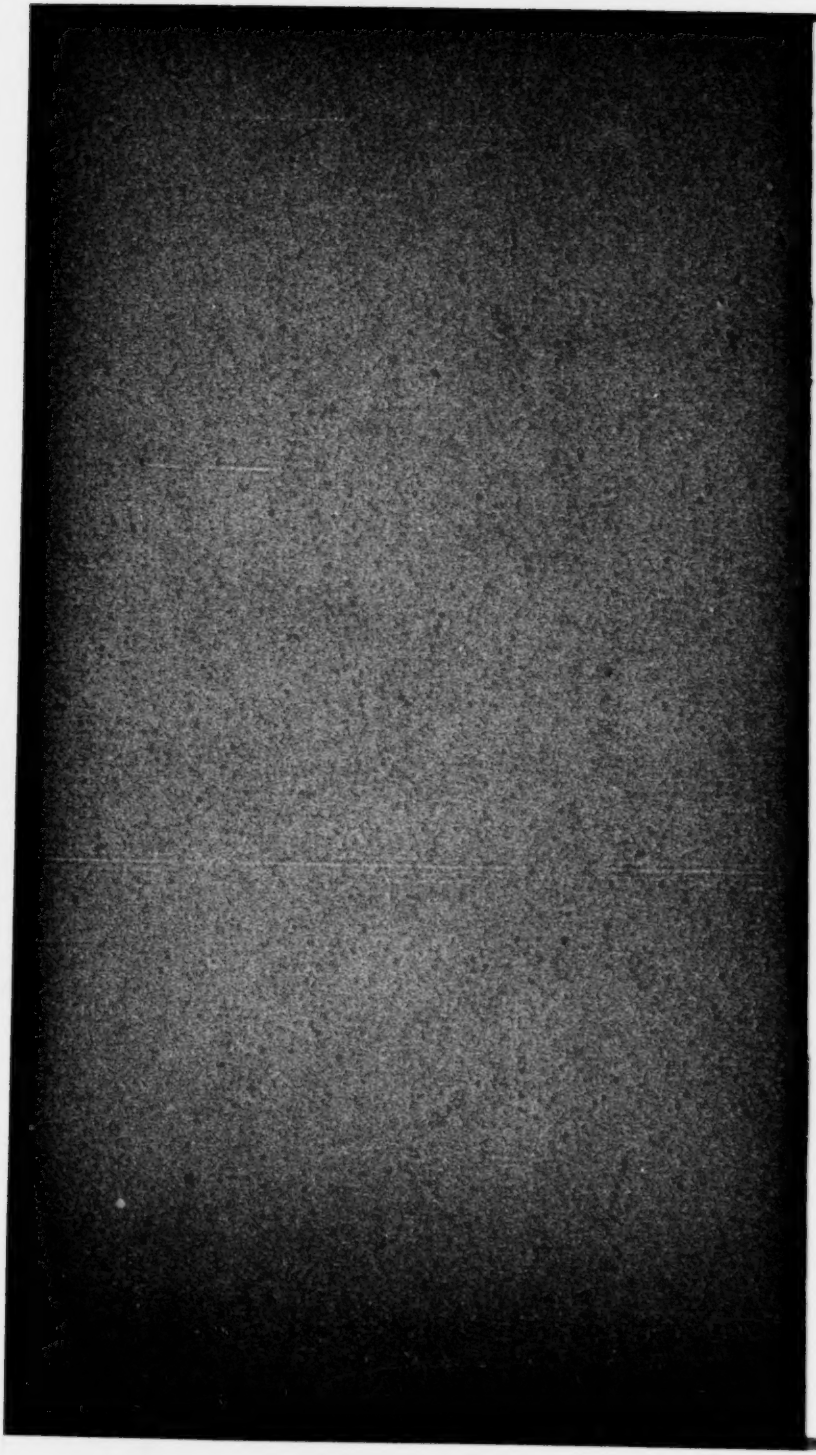

MAY 2 1974

MICHAEL RODAK, JR.,

IN THE

Supreme Court of the United States

October Term, 1973

Docket No. 73-1597

GERRIT LANSING,

Petitioner,

v.

NEW YORK STOCK EXCHANGE,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RUSSELL E. BROOKS
1 Chase Manhattan Plaza
New York, N. Y. 10005
Attorney for Respondent

Of Counsel:

MILBANK, TWEED, HADLEY & MCCLOY

April 30, 1974

The District Court dismissed at the close of the plaintiff's case pursuant to Rule 41(b), Federal Rules of Civil Procedure, because it found:

> "No evidence was presented at trial to show that the Stock Exchange violated the Act or Rules or any duties it assumed under the Act or Rules, and no evidence was produced to show that the Stock Exchange violated the New York Penal Law." (A-7 to Petition)

After oral argument, the Court of Appeals unanimously affirmed from the bench without opinion. Plaintiff's statement of the issues (Petition 2-3) makes clear that petitioner seeks to have this Court review the evidence and hopefully reach a different conclusion. Such a case does not meet any criterion of this Court's Rule 19. The Court does "not grant certiorari to review evidence and to discuss specific facts." *United States* v. *Johnston*, 268 U.S. 220, 227 (1925). The petition for a writ of certiorari should be denied.

Respectfully submitted,

RUSSELL E. BROOKS
1 Chase Manhattan Plaza
New York, N. Y. 10005
Attorney for Respondent

Of Counsel:

MILBANK, TWEED, HADLEY & MCCLOY

April 30, 1974